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Supreme Court U.S.
FILE
DEC 5 2002

No. 02-670

IN THE

SUPREME COURT OF THE UNITED STATES

RALSTON HAUGHTON and MARGARET HAUGHTON
husband and wife, Petitioners

vs.

WAL-MART STORES INC., Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT
OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITIONERS' REPLY BRIEF TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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10 pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether Title 42 U.S.C. § 1983, and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, affords the Respondent Wal-Mart Stores Inc., the right to be directed, to be advised, and to be authorized by the states attorney's office to write the race of the Petitioner on the Petitioners' check when purchasing merchandise at the Respondent's store, and Respondent Wal-Mart Stores Inc., not be rendered a state actor "under color of state law".

2. Whether the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, affords Respondent Wal-Mart Store Inc., the right to write the race of the Petitioner on the Petitioners' check when purchasing merchandise at Wal-Mart Store Inc., store, without a valid compelling state interest.

LIST OF PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

1. ASDA Group Limited
2. Richard A. DuRose
3. Scott A. Forman, Esquire
4. Hon. Thomas B. McCoun, 111, U.S. Magistrate Judge
5. Margaret Haughton
6. Ralston Haughton
7. McLane Company, Inc., and its subsidiaries
8. Hon. Steven D. Merryday, U.S. District Judge
9. Sam's East,, Inc.
10. Sam's Property Company
11. Sam's West, Inc.
12. Sam's Real Estate Business Trust
13. Michael C. Scher, Esquire
14. Wal-Mart Property Company
15. Wal-Mart de Mexico, S.A. de C.V.
16. Wal-Mart Real Estate Business Trust
17. Wal-Mart Stores East, Inc. Page
18. Wal-Mart. Com, Inc.
19. Wares Delaware Corporation
20. Erin A. Webb
21. Hon. L. Lanier Anderson, Judge, U.S. Court of Appeals. Eleventh Circuit.
22. Hon. Rosemary Barkett, Judge, U.S. Court of Appeals Eleventh Circuit
23. Hon. Charles R. Wilson, Judge, U.S. Court of Appeals, Eleventh Circuit.
24. John R. Hamilton, Esq.

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PETITIONERS' REPLY TO RESPONDENT'S ARGUMENT A

WELL-SETTLED PRINCIPLES OF LAW AND THE EVIDENCE IN THE RECORD ESTABLISH THAT WAL-MART IS A STATE ACTOR

The Petitioners' petition for writ of certiorari page 8, cited *Reitman v. Mulkey,* 387 U.S. 369, 87 S. Ct. 1627, 18 L. Ed. 2d. 830 (1967). Here it is well stated that:

> "Based on these cases, *Robinson v. State of Florida,* 378 U.S. 153, 156, 84 S. Ct. 1693, 1695, 12 L. Ed. 2d 771; *Anderson v. Martin,* 375, U.S. 399, 84 S. Ct. 454, 11 L. Ed. 2d 430; *Barrows v. Jackson,* 346 U.S. 249, 254, 73 S. Ct. 1031, 1033, 97 L. Ed. 1586; *McCabe v. Atchison, Topeka & Santa Fe R. Co.,* 235 U.S. 151, 35 S. Ct. 69, 59 L. Ed. 169, it concluded that a prohibited state involvement could be found "even where the state can be charged with only encouraging," rather than commanding discrimination.
>
> Also of particular interest to the Court was the Honorable Mr. Justice Stewart's concurrence in *Burton v. Wilmington Parking Authority,* 365 U.S. 715, 726, 81 S. Ct. 856, 862, 6 L.Ed. 2d 45, where it was said that the Delaware courts had construed an existing Delaware statute as "authorizing" racial discrimination in restaurants and that the statute was invalid."

These cases show conflicting results from the ruling of the lower Courts in this case.

In this case the state attorney's office had taken affirmative action designed to make Respondent discrimination possible. Respondent's customer check

policy was changed from one in which discrimination was restricted to one wherein it is encouraged and was made a guideline (R1- 81,- 47- lines 14-17). The state attorney's office advice, direction and authorization to Respondent to write the race of the Petitioner on the Petitioners' check made the state attorney's office a partner in the instant act of discrimination. See *Reitman v. Mulkey,* 387 U.S. 369, 87 S. Ct. 1627, 18 L. Ed. 2d. 830 (1967).

The record also shows that, race is the determinant factor throughout this case, and that the state attorney's office used race as a basis for distinction through the medium of Respondent (R1- 81,- 46-lines 21- Pg. 47-line 2), also (R1- 83,- 132,-lines 12-24), of which is clearly forbidden in this Court.

The Petitioners cited *Baldwin v. Morgan,* 287 F.2d at 750-760, (5th Cir. 1961), which held that:

> "What is forbidden is the state action in which color (i.e., race) is the determinant." Id 754. The Court then went on to say: "As we have pointed out above the State may not use race or color as the basis for distinction. It may not do so by direct action or through the medium of others who are under State compulsion to do so". Id 756.

The record has clearly shown that the Petitioners were deprived by the Respondent of their right to be free from racial discrimination, which is secured by the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States. The record has also shown that, the Respondent was a state actor acting under color of state law by writing the race of the Petitioner on the Petitioners' check by the direction, the advice, and the authorization of the state attorney's office.

PETITIONERS' REPLY TO RESPONDENT'S ARGUMENT B.

THE CASES CITED IN THE HAUGHTON'S PETITION DOES SUPPORT THEIR ARGUMENT THAT WAL-MART WAS ACTING UNDER COLOR OF STATE LAW

The Petitioners in their petition for writ of certiorari cited *Lombard v. State of Louisiana*, 373 U.S. 267, 83 S. Ct. 1122, 10 L. Ed. 2d 338. Here, this Court in *Reitman v. Mulkey*, 387 U.S. 369, at 380 87 S. Ct. 1627, at 1633, 18 L. Ed. 2d. 830 (1967), quoting Lombard supra, stated:

> "Finally, in Lombard v. State of Louisiana 373 U.S. 267, 83 S. Ct. 1122, 10 L. Ed. 2d 338, the Court interpreted public statements by New Orleans City Officials as announcing that the city would not permit Negroes to seek desegregated service in restaurants because the statements were deemed to have as much coercive potential..."

Similarly in this case, the statement of the state attorney's office that they would prosecute Respondent's customers' fraudulent checks with race written on them, using the Court and the Florida Statute 832, was potentially coercive for Respondent to adopt and follow the state attorney's direction, guidelines and authorization to write the race of the Petitioner on the Petitioners' check violating the Petitioners' Constitutional rights. Respondent's head of the accounting department Carolyn Shelton testified that: "... *if we wanted to prosecute checks, we had to follow these guidelines in order to do it.* (R1- 81,- 47- lines 14-17), also, (*R1-83-132,- lines 12-24*).

This Court also stated in *Reitman v. Mulkey* 387 U.S. 369, 87 S. Ct. 1627, 1633, 18 L. Ed. 2d. 830 (1967) that:

"In *Burton v. Wilmington Parking Authority*,

> 365 U.S. 715, 81 S. Ct. 856, the operator-lessee of a restaurant located in a building owned by the State and otherwise operated for public purposes, refused service to Negroes. Although the State neither commanded nor expressly authorized or encouraged the discrimination, the State had "elected to place its power, property and prestige behind the admitted discrimination" and by "its inaction * * * has * * * made itself a party to the refusal of service * * * "which therefore could not be considered the purely private choice of the restaurant operator."

The Petitioners cited Burton Id., showing similarity in this case that the state attorney's office is responsible for the Respondent's alleged conduct, and not only did the state attorney's office authorize, direct, or advise the alleged conduct of the Respondent, the state attorney's office also enforces the racially discriminatory conduct of the Respondent upon the Petitioners. Respondent's head of the accounting department Carolyn Shelton testified that: *"When we went to prosecute on the check, the prosecutor told us we had to have this information in order to prosecute* (R1- 81,- 46 lines 21- Pg. 47- line 7), in that, the state attorney's office not only has made itself a party to the racial discriminatory act, but also has elected to place the state attorney's office power, property, the Court, and prestige behind the alleged discriminatory conduct. See *Burton v. Wilmington Parking Authority*, 365 U.S. 715, 81 S. Ct. 856, also see *Edmonson v. Leesville Concrete Co.*, (1991) 500 U.S. 614, 114 L.Ed. 2d 660, 674, 111 S. Ct. 2077.

The Respondent cited the United States Court of Appeals Eleventh Circuit ruling(Appx-B-Pg. 28.), which

stated that:

> " Finally, although the state attorney's office advised Wal-Mart of the information that it would like to have to prosecute check fraud, it did not compel or provide encouragement significant enough for Wal-Mart to have become a state actor under the state compulsion test."

The Petitioners cited *Seidenberg v. McSorleys' Old Ale House, Inc.*, 317 F. Supp. 593, at 598, (2nd Cir. 1970), which stated that:

> "if the state engages in conduct having the effect of encouraging, tolerating or acquiescing in discrimination, the Fourteenth Amendment may be invoked. (quoting) *Reitman v. Mulkey*, 387 U.S. 369, 87 S. Ct. 1627, 18 L. Ed. 2d. 830 (1967)," showing more conflicting results.

The evidence in the record has shown that the state attorney's office did tolerate the writing of race on customers checks (R1- 81,- 47- lines 14-17)., the state attorney's office authorized the writing of race on customers' checks allowing the alleged policy of the Respondent to violate the Petitioners' Equal Protection right under the Fourteenth Amendment of Constitution of the United States (R1- 98, *copy of check attached*), and also, the state attorney's office acquiescing in the discrimination (R1- 83,- 131,- lines 11- Pg 132- line 24).

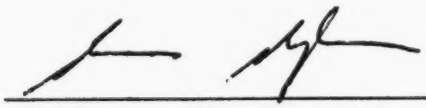
Furthermore, the record shows that Respondent has not shown any demonstration of any successful relationship to combating customers' fraudulent checks.

The facts and the evidence in the record has clearly shown that the lower Courts have reached conflicting results in this case, and have overlooked a clear distinction that this Court's cases have drawn, and the Court should therefore grant the Petitioners' petition for writ of certiorari.

CONCLUSION

For the foregoing reasons, the petitioner respectfully prays that its petition for a writ of certiorari be granted.

Respectfully submitted,



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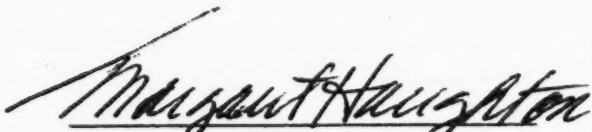

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Dated: December 4, 2002.

MISCELLANEOUS

AFFIDAVIT IN SUPPORT OF PETITIONERS' REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I, Ralston Haughton and Margaret Haughton in pro se, the Petitioners in this case duly sworn on oath, affirm that the statement we have made in the Reply to Respondent's Brief in Opposition to Petition for Writ of Certiorari are true to the best of our knowledge, information and belief.

State of Florida
County of Sarasota

Ralston Haughton

Margaret Haughton

SWORN TO AND SUBSCRIBED before me on 5th, day of December 2002.

NOTARY PUBLIC

My Commission Expires: